



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes

MNDC, FFL

### Introduction

On July 3, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. The Landlord was assisted by legal counsel. The Tenant was assisted by legal advocates. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary and Procedural Matters

The Landlord and Tenant testified that the tenancy began on April 15, 2016, as a 12-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,600.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00. The Tenant testified that the tenancy ended on July 4, 2017.

The Landlord applied for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement on July 3, 2019, which was the last day an application must be made pursuant to section 60 of the Act.

### Disclosure of Evidence and Opportunity to Respond

On July 3, 2019, the Landlord applied for monetary compensation in the amount of \$35,000.00 due to damage caused by a sump pump failure and back up of the sewage system. The Landlord's monetary order worksheet dated September 30, 2019 indicates a claim amount of \$30,445.97.

The Tenant testified that she received 65 pages of documentary evidence from the Landlord on October 4, 2019. The Tenant submitted that the documentary evidence was received late. The

Tenant's advocate submitted that the Landlord's evidence should be excluded because the Landlord did not follow the Rules of Procedure. The Tenant's advocate submitted that rule 3.17 should be applied.

The Tenants advocate made submissions which are summarized below:

- The Landlord did not provide the evidence at least 14 days prior to the hearing.
- The Tenant did not have an opportunity to review and respond to the Landlord's evidence.
- The Landlord's evidence requires the Tenant to seek an expert opinion.
- The Landlord had the evidence at the time the application was made.
- The Landlord must serve the evidence at the same time as the application and Notice of Hearing.
- The Landlord's evidence should not be considered new and relevant evidence.
- The Tenant's advocates had to contact the Landlord to received disclosure which was received by email on October 4, 2019.
- To accept the Landlord's evidence would violate the Tenant's rights.
- The Landlord knew or should have known the rules of procedure.

The Landlord made the following submissions which I have summarized below:

- There was a delay in sending the documents to the Tenant's counsel.
- The Landlord was dealing with the insurer and needed to get documents in order prior to applying.
- There was a delay in getting documents from a restoration company.
- The Tenant had been previously informed that the Landlord was applying for dispute resolution.
- To exclude the Landlord's evidence would be prejudicial to the Landlord due to a mistake made by their counsels office.
- The Landlord is not sure what additional evidence the Tenant could provide if she is given more time.
- The Landlord requested an adjournment under rule 7.8 to give the Tenant more time to consider and respond to the evidence.

### Rules of Procedure

The Residential Tenancy Branch Rules of Procedure ("the RTBROP") were developed to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

Rule #3 of the RTBROP provides direction on serving and exchanging evidence. Rule 3.1 provides:

*The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

Rule 3.14 provides:

*Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

*In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17*

Rule 3.17 provides:

*Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.*

*The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.*

*Both parties must have the opportunity to be heard on the question of accepting late evidence. If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment*

*after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].*

Rule 7.9 Criteria for Granting an Adjournment provides:

*Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- the oral or written submissions of the parties;*
- the likelihood of the adjournment resulting in a resolution;*
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- the possible prejudice to each party.*

A fundamental principle of natural justice is that a party that is subject to a decision must be provided with disclosure of the evidence that will be considered and must have an opportunity to consider and respond to the evidence.

#### Analysis

After considering the testimony and evidence of the parties and the criteria for granting an adjournment, I make the following findings;

I find that the Landlords did not provide a copy of their documentary evidence to the Tenant in accordance with rule 3.14. The Tenant's advocates received the Landlord's documentary evidence 11 days prior to the hearing. I accept the Tenant's evidence that the Tenant did not have a full opportunity to consider the Landlord's evidence and fully respond.

I have reviewed the Landlord's documentary evidence and I find that there is one insurance document that is dated September 13, 2019 which is after the date the Landlord applied for dispute resolution. I am mindful that the Landlord submitted that the Landlord's counsel submitted that there was a delay in getting some documents from the restoration company. I am not persuaded that Landlord's failure to disclose their evidence in a timely manner was intended to put the Tenant in weaker position. While I acknowledge that the Landlord applied for dispute resolution on the very last day of eligibility, the application was made on time and made in accordance with the legislation; therefore, I assign no finding of wrong-doing on that issue.

I find that accepting the Landlord's late evidence does not violate the Tenant's rights if the Tenant is given a full opportunity to consider and respond to it.

I find that the Landlords' claim is for a substantial amount of compensation, and that it is unlikely that the Landlords application would have any success if the Landlord's documentary evidence was excluded.

I find that an adjournment and opportunity for the Tenant to provide a full response to the Landlords' claims will provide both parties with a fair opportunity to be heard.

The hearing is adjourned and will be rescheduled.

The parties provided dates that they are not available for the next hearing.

The parties are expected to attend the next hearing. The Parties will be sent a Notice of Dispute Resolution Proceeding which will contain the date and time of the next hearing and will contain the phone number and access code to call into the hearing. The parties are cautioned that failure to attend the reconvened hearing may result in the hearing proceeding in their absence.

The Landlords are not permitted to amend their application. The Tenant is permitted to submit additional documentary evidence in response to the Landlords' application and evidence as long as it is served to the Landlord and RTB in accordance with the RTBROP.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 21, 2019

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Residential Tenancy Branch